Supreme Court, U.S.
FILED
FEB 26 1998
CLERK

No. 97-1069

In The

Supreme Court of the United States

October Term, 1997

JOHN H. HAPGOOD,

Petitioner,

vs.

THE CITY OF WARREN,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

JAMES E. SANDERS
Assistant Law Director
Attorney for Respondent
391 Mahoning Avenue, N.W.
Warren, Ohio 44483
(330) 841-2605

144908

(800) 274-3321 • (800) 359-6859
A DIVISION OF COUNSEL PRESS

Lutz Appellate Services, inc.

8 pp

TABLE OF CONTENTS

Page

Statement of the Case 1

Reasons for Denying the Writ 5

Conclusion 6

TABLE OF CITATIONS

Case Cited:

National Amusement Inc. v. City of Springdale, 558 N.E. 2d 1178 (Ohio 1990) 6

STATEMENT OF THE CASE

Petitioner, John H. Hapgood, was hired as a firefighter by Respondent, City of Warren (a municipal corporation), effective March 30, 1992. In January of 1993, Petitioner began experiencing back-related discomfort. In March of 1993, Petitioner was seen by one physician, and thereafter was seen by a second physician. As a result of these examinations, it was determined that Petitioner required back surgery. On May 13, 1993, Petitioner received a health insurance questionnaire asking whether or not the back condition in question was work-related. Petitioner responded on May 26, 1993, a few days after his surgery, that the back condition in question was not work-related.

Petitioner returned to work on June 4, 1993. Due to his physical disability he was assigned to "light duty". This "light duty" continued throughout the summer of 1993.

On September 27, 1993, Petitioner's "light duty" status was brought into question. Petitioner thereafter, on October 15, 1993, submitted an application for Workers' Compensation benefits. This claim stated that the aforementioned back problem of Petitioner was now work-related.

Following conferences and pre-disciplinary hearings, Petitioner was discharged from his employment with Respondent on December 7, 1993, for the falsification of his aforementioned Workers' Compensation claim.

After Petitioner's discharge, he filed a charge of discrimination against Respondent with the Ohio Civil Rights Commission. Within said charge Petitioner asserted that he was discharged contrary to state law in retaliation for having filed or pursued a Workers' Compensation claim against Respondent.

The Ohio Civil Rights Commission, on December 15, 1994, dismissed Petitioner's charge against Respondent, ruling that just cause existed for Petitioner's discharge. Thereafter Petitioner requested that the Ohio Civil Rights Commission reconsider its dismissal of his charge against Respondent, again asserting that he was discharged contrary to state law by Respondent in retaliation for having filed or pursued a Workers' Compensation claim. The Ohio Civil Rights Commission thereafter denied Petitioner's request for reconsideration.

At the time of Petitioner's discharge, there was in effect a collective bargaining agreement by and between Respondent and the bargaining agent for such employees as Petitioner (*i.e.*, International Association of Firefighters, Local No. 204). Said agreement was applicable to Petitioner. Said agreement expressly provided that no firefighter should be discharged except for just cause. That agreement also expressly provided that any firefighter desiring to contest the appropriateness of his discharge from employment must have that discharge reviewed through the grievance and arbitration provisions of said collective bargaining agreement. Said agreement also provided for final and binding arbitration for grievances thereunder by a neutral arbitrator.

After his discharge, Petitioner filed a grievance under the aforementioned collective bargaining agreement whereby he contested the justness of his discharge, arguing that he was not discharged for just cause. During the arbitration process, Petitioner asserted no federal claims, argued no federal claims, and raised no issue relative to the federal Labor Management Relations Act of 1947, or any other federal law. During the arbitration process, a hearing was held at which Petitioner and Respondent both had an opportunity to present their respective positions on the grievance, to offer evidence, to present witnesses, to cross-examine witnesses, and to brief the issues in

writing. The neutral arbitrator, at the conclusion of the arbitration process, denied Petitioner's grievance, ruling that Petitioner was properly discharged for just cause.

After his discharge, Petitioner also filed an action in the Court of Common Pleas of Trumbull County, Ohio (hereinafter referred to as "the state trial court"). Within his Complaint before the state trial court, Petitioner set forth two causes of action. Petitioner alleged that his discharge resulted from "unlawful retaliation because of his pursuit of Workers' Compensation Claim", all allegedly "in violation of Ohio Revised Code Section 4123.90", and that his discharge resulted from intentionally tortuous conduct on the part of Respondent, in violation of state law.

Before the state trial court, Petitioner asserted no federal claims, argues no federal claims, and raised no issue relative to the federal Labor Management Relations Act of 1947, or any other federal law. On October 13, 1995, the state trial court granted Respondent's motion for summary judgment upon principles of collateral estoppel.

During the pendency of the aforedescribed action before the state trial court, the United States Equal Employment Opportunity Commission also examined the merits of Petitioner's discharge. That agency independently examined the record presented before the Ohio Civil Rights Commission, and the findings of the Ohio Civil Rights Commission. During the pendency of the aforedescribed action before the state trial court (*i.e.*, on June 29, 1995) the United States Equal Employment Opportunity Commission likewise found that Petitioner was discharged by Respondent for just cause.

From the aforedescribed order of the state trial court granting summary judgment in favor of Respondent, Petitioner filed a

Notice of Appeal with the Court of Appeals of the Eleventh Appellate District of Ohio (hereinafter referred to as "the state appellate court") on November 1, 1995. During this appeal process, Petitioner again argued that he was discharged by Respondent contrary to state law in retaliation for having filed or pursued a Workers' Compensation claim against Respondent. During this appeal process (as during the proceeding below in the state trial court) Petitioner asserted no federal claims, argued no federal claims, and raised no issue relative to the federal labor Management Relations Act of 1947, or any other federal law.

On October 28, 1996, the state appellate court affirmed the summary judgment rendered by the state trial court below in favor of Respondent under principles of collateral estoppel.

From the aforedescribed order of the state trial court granted Summary Judgment failure to Respondent/Petitioner filed a Notice of Appeal with the Court of Appeals of the Eleventh Appellant District of Ohio, hereinafter referred to as "State Appellate Court") on November 1, 1995. Petitioner asserted no federal claims, argued no federal claims and raised no issue relative to any federal law.

On February 28, 1996, the state appellate court affirmed its Summary Judgment rendered by the state trial court below in favor of the Respondent upon the principles of collateral estoppel.

From the aforedescribed decision of the state appellant court Petitioner filed his Notice of Appeal and Memorandum in Support of Jurisdiction of the Ohio Supreme Court on December 12, 1996. Within his Memorandum, Petitioner asserted no federal claims, raised no issue relative to any other federal law. By entry filed March 12, 1997, the Ohio Supreme Court declined

jurisdiction to hear this case. From that decision Petitioner filed a different Petition for a Writ of Certiorari with this honorable Court.

Concurrently with the state court proceedings the Petitioner filed on September 23, 1995, Case 4:95 CV 0290 in the United States District Court, Plaintiff's complaint for damages alleging violations of the American Disability Act. Therein Petitioner asserted he was terminated from his employment when he filed a Worker's Compensation Claim rather than being reasonably accommodated due to his disability. Upon Motion for Summary Judgment filed by the Respondent the City of Warren the United Stated District Court Judge granted Summary Judgment in favor of the Respondent upon the principles of Res Judicata.

From the United States District Courts decision the Petitioner filed his Notice of Appeal. Said appeal was heard by the United States Court of Appeals for the Sixth Circuit Case, No. 96-3917. Oral arguments were held on July 30, 1997 and the United States Court of Appeals affirmed the Summary Judgment rendered by the United States District Court in favor of the Respondent under the principles of collateral estoppel.

From that decision Petitioner has filed his second petition for a Writ of Certiorari before this Honorable Court.

REASONS FOR DENYING THE WRIT

The Petitioner has submitted to this Honorable Court for review the questions as to whether an employees' utilization of the union grievance procedure bars an employee's right to bring suit for a federally protected claim such as the Americans With Disability Act. However this presentment by the Petitioner is a misconstruction and misrepresentation of the lower court proceedings.

The issue which was decided by the federal trial court was that the Doctrine of Res Judicata prevents the Petitioner from subsequently and in a different forum presenting allegations of violations of a federal law with facts that arose out of the same occurrence presented in prior court proceedings.

The federal court of appeals upheld the federal trial court and stated "through his ADA claim Plaintiff is merely seeking in relitigate the propriety of his discharge". That court further stated the claim preclusion prong of Res Judicata "requires a Plaintiff to present every ground for relief in the first action, or forever be barred from asserting it" citing *National Amusement Inc. v. City of Springdale*, 558 N.E. 2d 1178, 1180 (Ohio 1990).

In the case at bar the courts below did not decide a "federal question", let alone "an important federal question", or "an important federal question" which conflicts with an applicable decision of an applicable other court. The allegations as set forth by the Petitioner in his Petition for the Writ of Certiorari are clearly based upon deficient factual and legal premises.

CONCLUSION

In light of the foregoing Respondent respectfully prays that Petitioner's Petition for a Writ of Certiorari be denied.

Respectfully submitted,

JAMES E. SANDERS
Assistant Law Director
Attorney for Respondent
391 Mahoning Avenue, N.W.
Warren, Ohio 44483
(330) 841-2605